Supreme Court of the United States

OCTOBER TERM, 1945

No. 445

THE LINCOLN NATIONAL LIFE INSURANCE COMPANY,
Petitioner

versus

STATE TAX COMMISSION, AND GREEK L. RICE, ATTORNEY GENERAL OF THE STATE OF MISSISSIPPI,
Respondents

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

HUBERT S. LIPSCOMB,
Jackson, Mississippi.

CLYDE J. COVER,
Fort Wayne, Indiana.
Counsel for Petitioner

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Petitioner,

v.

STATE TAX COMMISSION, AND GREEK L. RICE, ATTORNEY GENERAL, OF THE STATE OF MISSISSIPPI,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioner, The Lincoln National Life Insurance Company, in support of this petition for writ of certiorari, to be directed to the Supreme Court of Mississippi, to review a judgment entered therein on May 28, 1945, with respect to Cause Number 35,918 captioned "Lincoln National Life Insurance Company, appellant, v. State Tax Commission and Greek L. Rice, Attorney General of the State of Mississippi, appellees," reported in 22 Southern 2nd 416 (same case on first appeal No. 35,485, reported in 16 Southern 2nd 369), respectfully shows:

STATEMENT OF MATTER INVOLVED

This case resulted from the act of the State of Mississippi in assessing income tax on reinsurance premiums received by petitioner in relation to reinsurances of risks under life insurance policies issued to Mississippi residents by companies resident and non-resident of Mississippi. At each stage of the proceeding from its origin before the State Tax Commission to its consideration by the Supreme Court of Mississippi on two appeals, petitioner challenged the validity of the assessment under the Constitution of the United States. (R 20-25 at 24; 27; 4-9; 20).

Petitioner is a life insurance company domiciled in Indiana and during the years in question (1937 to 1940 inclusive) was licensed in Mississippi to engage in the business of life insurance. During such years petitioner wrote only $14,400 of life insurance in Mississippi through an agent there acting and did no other acts within said state unless the reinsurance routine hereinafter described should be so considered. (R 20-25).

Petitioner during the years in question received: (1) Reinsurance premiums from Mississippi life insurance companies on account of reinsurances of risks incurred by such companies under life insurance policies issued to residents of Mississippi, and (2) reinsurance premiums from companies foreign to Mississippi on account of reinsurances of risks incurred by such companies under life insurance policies issued to residents of Mississippi. The State Tax Commission and the trial court in the first proceeding held that both types of reinsurance premiums were subject to income tax. (R 25; 27). The Supreme Court of Mississippi on the first appeal reversed the trial court's rulings with respect to the tax asserted on reinsurance premiums derived from companies foreign to Mississippi, holding that such an application of the tax would contravene the Fourteenth Amendment to the Constitution of the United States, and upheld the trial court's ruling with respect to the tax asserted on reinsurance premiums derived from companies domiciled in Mississippi. (R 4-9). Pursuant to the decree and judgment of the Supreme Court of Mississippi on the first appeal, the cause was remanded to the trial court for proceedings consistent with such decree and judgment. Thereafter the trial court overruled the respondent's demurrer to the petition and allowed respondent to file an answer and cross petition for recovery of taxes with respect to reinsurance premiums derived from companies domestic to Mississippi. Petitioner's demurrer to the cross petition was overruled and, petitioner electing to stand on its demurrer, the trial court rendered judgment in favor of the respondent for the amount of the tax in relation to reinsurance premiums derived from Mississippi companies. The petitioner perfected a second appeal to the Supreme Court of Mississippi, which Court affirmed the judgment of the trial court and in so doing adopted its opinion on the first appeal. (R 19, 20). In the instant proceeding petitioner

challenges the judgment of the Supreme Court of Mississippi on the second appeal on the ground that it too is in contravention of the Fourteenth Amendment to the Constitution of the United States.

The principal paragraph of the Mississippi Income Tax law under which the tax is asserted reads as follows:

> "A like tax is hereby imposed to be assessed, collected and paid annually at the rates specified in this section and as hereinafter provided upon and with respect to the entire net income, from all property owned and from every business, trade or occupation carried on in this state by * * * corporations * * * not residents of the State of Mississippi." (1)

Also pertinent is the following provision of the same law:

> "In the case of foreign corporations or of a non-resident or citizen of a foreign country the following items of gross income shall be treated as income from sources within the state.
>
> (a) Insurance premiums, interest on bonds, notes or other interest bearing obligations of residents, corporate or otherwise; the amount received as dividends from domestic corporations, provided, income from any loan by non-residents or foreign corporations or citizens of a foreign country, shall not be included as taxable income, or from foreign corporations of which more than fifty per cent (50%) of the gross income was derived from sources within the state; compensation for personal service or labor performed within the state; rentals or royalties from property or any interest in property within the state, and income from the operation, or ownership of any property within the state; and income realized from the disposition of any property employed in the regular trade or business of the taxpayer." (2)

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(1) Sec. 3 (2), Chap. 120, Laws 1934; reenacted Chap. 115, Laws 1938, page 112, Sec. 3 (2); reenacted Chap. 111, Laws 1940, page 98, Sec. 3 (2).

(2) Sec. 11 (1), Chap. 120, Laws 1934; reenacted Chap. 151, Laws 1936, page 132, Sec. 11 (1) (a).

THE QUESTION PRESENTED

The question presented is whether the State of Mississippi has power to levy an income tax on reinsurance premiums in relation to risks under insurances upon the lives of Mississippi residents, received by the petitioner from Mississippi insurance companies under the facts alleged in the petition and admitted by the respondent in its answer and cross bill.

The facts essential for this petition, alleged in the petitioner's petition to the trial court and admitted in the respondent's answer and cross bill, are these: Petitioner is resident of the State of Indiana and during the period in question (1937 to 1940 inclusive) was licensed to engage in the life insurance business in the State of Mississippi; a large part of petitioner's business consists of reinsuring life risks originally underwritten by other insurance companies; during the period in question, petitioner had but one part-time insurance agent in Mississippi whose aggregate production for such period was only $14,400 of insurance; petitioner became licensed in Mississippi in order that insurance companies chartered by said state might obtain credit in their annual statements for reserves under policies reinsured with the petitioner, the Insurance Commissioner of Mississippi having issued a ruling that a domestic company could only claim credit for such reserves if the reinsuring company was licensed to do business within the state; the reinsurance agreements or charters under which the premiums in question were received were negotiated by the petitioner with Mississippi companies through the United States mail or else outside the borders of the State of Mississippi; the reinsurance agreements or charters defined the terms and conditions upon which reinsurance might be submitted to and accepted by the petitioner; under one type of reinsurance agreement the

petitioner was obliged to accept reinsurance ceded to it by the Mississippi insurer, provided same conformed to the terms and conditions of such reinsurance agreement; under the other type of reinsurance agreement it was necessary that an application be made and submitted to the petitioner, on which the petitioner had the right, in its discretion, to either grant or deny reinsurance coverage; in both cases the reinsurance was either ceded or submitted to the petitioner through the medium of the United States mail, and approved or accepted by petitioner at its Home Office in Fort Wayne, Indiana; in all instances, cessions or applications for reinsurance were acted upon by petitioner at its Home Office in Fort Wayne, Indiana, and reinsurance premiums were transmitted directly to petitioner from the Home Offices of the Mississippi companies within the State of Mississippi through the medium of the United States mail. (R 10-15; 20-24).

On these facts alone depends the question whether the Supreme Court of Mississippi was correct or in error in adjudging the petitioner liable for income tax on account of reinsurance premiums received by it from Mississippi life insurance companies.

STATEMENT GOING TO THIS COURT'S JURISDICTION TO REVIEW THE JUDGMENT OF MISSISSIPPI SUPREME COURT

The validity of the assessment in question under the Fourteenth Amendment to the Constitution of the United States has been in issue at every phase of this controversy. The issue was first raised in petitioner's petition in the trial court (R 20-24 at 24), it was considered by the trial court in its first opinion (R 27-28), it was asserted in petitioner's demurrer to the respondent's cross petition (R 15-16), and it was adjudicated by the Supreme Court of Mississippi on both appeals (R 4-9; 20).

This Court has repeatedly ruled that a reinsurance contract is solely between the reinsurer and the reinsured and does not involve the subject of the original insurance. (1) This doctrine was accepted without question by the Supreme Court of Mississippi in its opinion. (R 4-9 at 5). The ruling challenged is in conflict with the doctrine stated in that it necessarily assumes that petitioner through the reinsurance contract sustained a direct relationship with the subject of the original insurance.

It is an established doctrine of this Court that a state has jurisdiction to tax only acts performed, business done or property situated within its territorial limits. Connecticut General Life Insurance Co. v. Johnson, 303 U.S. 77, 58 Sup. Ct. 436, 82 L. Ed. 673 (1938), and cases there cited.

Receipt by petitioner without the limits of Mississippi of reinsurance premiums originating in Mississippi under the facts and circumstances established by the pleadings involved no act nor incident within the State of Mississippi on which that state could predicate jurisdiction to tax such premiums under its Income Tax law. An extension of the income tax in question to embrace transactions occurring beyond the territorial limits of Mississippi is in contravention of the Fourteenth Amendment to the Constitution of the United States.

Reinsurance is extensively employed by the present-day insurance industry and hence if the ruling in question is permitted to stand, it will have far-reaching consequences nationally.

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(1) Allemannia Fire Ins. Co. v. Firemen's Ins. Co., 209 U.S. 326, 28 Sup. Ct. 544, 52 L. Ed. 815 (1908); Morris & Co. v. Skandinavia Ins. Co., 279 U.S. 405, 49 Sup. Ct. 360, 73 L. Ed. 762 (1929); Phoenix Ins. Co. v. Erie & Western Transportation Co., 117 U.S. 312, 6 Sup. Ct. 750, 1176, 29 L. Ed. 873 (1886); United States Fidelity & Guaranty Co. v. French Mutual Gen. Soc. 212 F. 620, 129 C.C.A. (4th Cir.) 156 (1914), certiorari denied 234 U.S. 758, 34 Sup. Ct. 676, 58 L. Ed. 1579; Connecticut General Life Ins. Co. v. Johnson, 303 U.S. 77, 58 Sup. Ct. 436, 82 L. Ed. 673 (1938).

REASONS RELIED UPON FOR ALLOWANCE OF THE WRIT

The judgment here in question is a final judgment rendered by the highest court of the State of Mississippi in which a decision could be had and involves petitioner's rights, privileges or immunities under the Constitution of the United States. The logic of the assertion that petitioner's rights, privileges or immunities under the Constitution of the United States are infringed by the judgment is as follows:

1. A state's taxing power stops with its boundaries, or, stated conversely, a state has only power to tax property located or acts performed within its territorial limits. This doctrine has been often announced and applied by this Court. In the case of Johnson v. Connecticut General Life Insurance Co., 303 U.S. 77, 58 Sup. Ct. 436, 82 L. Ed. 673 (1938), it was stated as follows:

   > "As a matter of convenience and certainty, and to secure a practically just operation of the constitutional prohibition, we look to the state power to control the objects of the tax as marking the boundaries of the power to lay it. Hence it is that a state which controls the property and activities within its boundaries of a foreign corporation admitted to do business there may tax them. But the due process clause denies to the state power to tax or regulate the corporation's property and activities elsewhere." (Supporting cases cited).

2. Because of the foregoing principle and because the tax statute in question in its relation to corporations not resident of the state, applies only to "net income from business, trade or occupations carried on in the State of Mississippi," it follows that the Mississippi Supreme Court must have concluded from the facts alleged in the complaint and admitted in respondent's

answer that petitioner through its reinsurance connections with Mississippi companies was carrying on a trade or business within that state. (R second complete paragraph page 5).

3. But petitioner's act of granting reinsurance to Mississippi companies in relation to original insurances issued to Mississippi residents did not involve petitioner in any act within the State of Mississippi.

(a) Because reinsurance contracts are between the reinsurer and the reinsured and do not run between the reinsurer and the subject of the insurance to which the reinsurance relates. Cases supra, footnote (1), page 6.

The facts developed by the pleadings reveal no acts done in the State of Mississippi by petitioner. The reinsurance was effected through the acts of Mississippi companies in submitting to petitioner via the mails applications, cessions and premiums and through the complementary act of the petitioner outside the State of Mississippi in accepting applications, cessions and premiums.

(b) Because the Mississippi companies were not agents of the petitioner in the performance of their acts incidental to the reinsurance. This conclusion follows from the fact that reinsurance is a contractural thing like any other form of insurance in which each party acts solely for itself.

(c) Because a Mississippi life insurance company may through the United States mails contract for insurance with a foreign company without involving the latter company in any acts within the State of Mississippi cognizable under a tax statute of such state:

Minnesota Commercial Men's Assn. v. Benn, 261 U.S. 140, 43 Sup. Ct. 293, 67 L. Ed. 573 (1923); Baldwin v. Iowa State Traveling Men's Assn., 40 Fed. (2d) 357 (1930) C.C.A.8; Oliver v. Iowa State Traveling Men's Assn., 76 Fed. (2d) 963 (1935) C.C.A.8; Sasnett v. Iowa State Traveling Men's Assn., 90 Fed. (2d) 514 (1937) C.C.A.8; Pembleton v. Illinois Commercial Men's Assn., 289 Ill. 99, 124 N.E. 355 (1919); Saunders v. Iowa State Traveling Men's Assn., 222 Iowa 969, 270 N.W. 407 (1936).

Consistent with the principle announced in the foregoing cases, this Court and others have held that a state cannot prohibit its residents from procuring insurance through the mail from unlicensed foreign companies, nor can a state prohibit a foreign company from insuring risks within such state through the medium of the United States mail:

Allgeyer v. State of Louisiana, 165 U.S. 578, 17 Sup. Ct. 427, 41 L. Ed. 832 (1897); Hammond v. International Railways Co., 63 Misc. Rep. 437, 116 N.Y.S. 854 (1909); Swing v. Taylor & Crate, 68 W. Va. 621, 70 S.E. 373 (1911); Kasprzak v. Mutual Life Assur. Co. of Canada, 1 Fed. Supp. 915 (1932) Dist. Ct. W. D. New York.

Also consistent with the principle stated is the holding of this Court that the receipt by a nonlicensed foreign company of insurance premiums from residents of the state is not of itself sufficient to constitute a condition of doing business and thus to subject such company to the jurisdiction of such state:

Provident Savings Life Assur. Soc. v. Kentucky, 239 U.S. 103, 36 Sup. Ct. 34, 60 L. Ed. 167 (1915).

4. Petitioner's license to do business within the State of Mississippi is without significance under the tax statute in question in the absence of income from business done within the state on which the tax law can operate. The tax in question is upon net income, not upon the privilege of doing business within the state. For the privilege of doing an insurance business within its borders, the State of Mississippi imposes a tax of two and one-fourth percent on gross premium receipts. (1) It is necessary, therefore, in order to sustain the tax in question to discover that petitioner in fact received net income from property owned or business done within the State of Mississippi.

It is true that the petitioner during the years in question was licensed as a foreign life insurance company in the State of Mississippi, but it is also true that petitioner during that entire period was not actively engaged in the life insurance business in that state. As stated heretofore, petitioner procured a license so that its reinsurance clients within the State of Mississippi would be privileged under the law and the ruling of the Insurance Department to take reserve credit in preparing their annual reports. Mississippi and a few other states empower their Insurance Commissioner to disallow as assets of a reinsured company the amount of reserves held by a reinsuring company unless the reinsuring company itself has qualified to do business within the state. The act of qualifying required for such purpose is merely

(1) Chap. 20, Laws 1935, page 82, Sec. 108; reenacted Chap. 120, Laws 1940, page 159, Sec. 109; reenacted Chap. 138, Laws 1944, Sec. 19.

a test of financial stability and strength and has no bearing upon the question whether the reinsuring company is doing business within the state.

The situation of the petitioner with respect to its license to do business in Mississippi may be likened to the situation of a commercial business corporation foreign to Mississippi which for the purpose of effecting a business advantage in dealing with its clients in Mississippi procures a license to do business in that state, where, it may be assumed, a sales tax is in effect. If such a corporation did not in fact sell goods within the state, the sales tax could have no application to it even though it was fully licensed as a foreign corporation. In quite the same way, petitioner, though not desirous of engaging in business within the State of Mississippi, conceived it to be to its advantage to obtain a license to carry on business within the state, but yet it did not as a matter of fact maintain an active agency therein except to the negligible degree mentioned in the petition.

As heretofore stated, the obligation of petitioner to include, as a part of its gross income for tax purposes, the premiums derived from the $14,400 of *direct* business is not in issue in this case. That obligation was recognized and fully discharged. (R 21; 11). The situation here presented with respect to petitioner's license to do business in Mississippi is similar to that presented in Connecticut General Life Insurance Company v. Johnson, supra.

In the facts of the case last referred to, the Connecticut General was "admitted to do an insurance business in California." Unlike The Lincoln (except to the extent of the $14,400 of direct business written by it in Mississippi during the four year period in question) the Connecticut General regularly wrote

direct business within the State of California. As stated by the Court:

> "In addition to its business conducted within that state it has entered into contracts with other insurance corporations likewise licensed to do business in California, reinsuring them against loss on policies of life insurance effected by them in California and issued to residents there. These reinsurance contracts were entered into in Connecticut where the premiums were paid and where the losses, if any, were payable. The question for decision is whether a tax laid by California on the receipt by appellant in Connecticut of the reinsurance premiums during the years 1930 and 1931, infringes the due process clause of the Fourteenth Amendment."

The Court fully recognized the principle that a foreign corporation may be licensed to do business in a state, and may be taxed by the state on the business done within its borders, while at the same time carrying on activities beyond the borders of the state which the state is without power to tax. On this point the Court said:

> "The grant by the state of the privilege of doing business there and its consequent authority to tax the privilege do not withdraw from the protection of the due process clause the privilege, which California does not grant, of doing business elsewhere. * * * Even though a tax on the privilege of doing business within the state in insuring residents and risks within it may be measured by the premiums collected, including those mailed to the home office without the state, Equitable Life Assur. Soc. v. Pennsylvania, 238 U.S. 143, 59 L. Ed. 1239, 35 S. Ct. 829, and though the writing of the policies without the state insuring residents and risks within it is taxable because within the granted privilege, Compania General de Tabacos

> v. Collector of Internal Revenue, supra (275 U.S. 98, 72 L. Ed. 182, 48 S. Ct. 100), there is no basis for saying that reinsurance which does not run to the original insured, and which from its inception to its termination involves no action taken within California, even the settlement and adjustment of claims, is embraced in any privilege granted by that state. * * * All that appellant did in effecting the reinsurance was done without the state and for its transaction no privilege or license by California was needful. The tax cannot be sustained either as laid on property, business done, or transactions carried on within the state, or as a tax on a privilege granted by the state."

Therefore, even though it were true, as it is not, that petitioner had an active agency in the State of Mississippi throughout the years involved in this controversy, there would be no basis for imposing the tax unless it could be established that the incidental acts of reinsurance, as distinguished from other business activities, amounted to the condition of doing business. The business of a foreign company must be taken as it is presented. One segment of the business may fall definitely within the law as an act done within the state, while another segment may as clearly fall outside the law in that it involved no act within the jurisdiction of the state.

The Supreme Court of Mississippi apparently concluded from the fact of petitioner's license to do business in Mississippi that it in fact did business there through its reinsurance connections. In this holding it misconstrued the doctrines of this Court relative to the nature of reinsurance as well as the doctrines of this Court relative to the power of states to tax non-resident corporations.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Court, directed to the Supreme Court of Mississippi, commanding that Court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case entitled on its docket, The Lincoln National Life Insurance Company, appellant, v. State Tax Commissioner and Greek L. Rice, Attorney General of the State of Mississippi, appellees, and that the said judgment of the Supreme Court of Mississippi may be reviewed by this Court, and that your petitioner have such other and further relief in the premises as to this Court may seem meet and just; and your petitioner will ever pray.

HUBERT S. LIPSCOMB,
Jackson, Mississippi.

CLYDE J. COVER,
Fort Wayne, Indiana.
Counsel for Petitioner.